

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ERNEST MURPHY,

Defendant.

No. 18-cr-373-11 (RJS)

ERNEST MURPHY,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

No. 23-cv-1937 (RJS)

ERNEST MURPHY,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

No. 23-cv-2049 (RJS)

ORDER

RICHARD J. SULLIVAN, Circuit Judge:

On March 6, 2023, Defendant Ernest Murphy filed a pro se motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (No. 18-cr-373-11, Doc. No. 621; No. 23-cv-1937, Doc. No. 1.) On March 8, 2023, Murphy filed a second section 2255 motion challenging the same conviction and sentence. (No. 23-cv-2049, Doc. No. 1.)<sup>1</sup> When a defendant files a second section 2255 motion before the district court has resolved his initial section 2255 motion, the district court

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<sup>1</sup> When Murphy first petitioned for relief under section 2255, his motion to dismiss the indictment or for a new trial under Rule 33 of the Federal Rules of Criminal Procedure remained pending. (No. 18-cr 373 11, Doc. No. 909.) The Court has since denied that motion. (No. 18-cr 373 11, Doc. No. 968.)

generally treats the second section 2255 motion as an amendment or a supplement to the pending motion rather than as a successive section 2255 motion. *See Ching v. United States*, 298 F.3d 174 (2d Cir. 2002). Here, the Court construes Murphy's second section 2255 motion as an amended motion rather than as a successive motion. Accordingly, IT IS HEREBY ORDERED THAT the Clerk of Court is respectfully directed to: (1) file the section 2255 motion pending in No. 23-cv-2049 as an amended section 2255 motion pending in Case No. 23-cv-1937; (2) administratively close the action opened under Case No. 23-cv-2049; and (3) electronically notify the Criminal Division of the U.S. Attorney's Office for the Southern District of New York that this order has been issued.

Moreover, because Murphy did not file a memorandum of law in support of his section 2255 motion, IT IS FURTHER ORDERED that: Murphy shall file his opening brief by May 26, 2023; the government shall respond to Murphy's section 2255 motion by June 26, 2023; and Murphy shall reply by July 24, 2023. IT IS FURTHER ORDERED that all further papers filed or submitted in connection with Murphy's section 2255 motion must include both the civil and criminal case numbers and be docketed in both the civil and criminal cases, Nos. 18-cr-373-11 and 23-cv-1937. The Clerk of Court is respectfully directed to mail a copy of this order to Ernest Murphy.

SO ORDERED.

Dated: April 27, 2023  
New York, New York



RICHARD J. SULLIVAN  
United States Circuit Judge  
Sitting by Designation